17-215

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 200.

MAGDALENE VON COTZHAUSEN, PLAINTIFF IN ERROR,

vs.

JOHN NAZRO, COLLECTOR OF CUSTOMS, AND HENRY C. PAYNE, POSTMASTER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED MARCH 20, 1880.

SUPREME COURT OF THE UNITED STATES.

No. 200.

MAGDALENE VON COTZHAUSEN, PLAINTIFF IN ERROR,

vs.

JOHN NAZRO, COLLECTOR OF CUSTOMS, AND HENRY C. PAYNE, POSTMASTER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

INDEX.

	Original.	Print.
Term heading, &c	1	1
Petition of defendant John Nazro for writ of certiorari	2	1
Petition of defendant Henry C. Payne for writ of certiorari	5	2
Writ of certiorari	7	4
Marshal's return of service of same	8	4
Return of justice of the peace to said writ	9	4
PROCEEDINGS IN UNITED STATES CIRCUIT COURT.		
Amended complaint	15	7
Answer of defendants	16	8
Trial	16	8
Trial concluded and special verdict	17	8
Motion of both parties for judgment	19	10
Order overruling plaintiff's motion for judgment and granting defendants' motion	19	10
Judgment against plaintiff for costs	20	10
Bill of exceptions	20	10
Bond for costs on writ of error	38	18
Clerk's certificate	41	19
Writ of error	42	20
Citation	43	20

1 Circuit court of the United States for the eastern district of Wisconsin.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

At a stated term of the circuit court of the United States of America for the eastern district of Wisconsin, begun and held at the city of Milwaukee, in said district, on the first Monday (being the sixth day) of October, 1879. Present, the honorable Charles E. Dyer, district judge, presiding; also present, Henry Fink, marshal, and Edward Kurtz, clerk. Among other the following proceedings were had, to wit:

MAGDALENE VON COTZHAUSEN, PLAINTIFF,
vs.
JOHN NAZRO & HENRY C. PAYNE, DEFENDANTS. } At law.

Be it remembered that heretofore, to wit, at a term of said court, begun and held according to law, at the city of Milwaukee, on the first Monday (being the seventh day) of January, A. D. 1878. Present, the honorable Charles E. Dyer, district judge, presiding. And on the fourth day of said term, to wit, on the eleventh day of January, A. D. 1878, the following proceedings were had, to wit:

2 MAGDALENE VON COTZHAUSEN
vs.
JOHN NAZRO & HENRY C. PAYNE. } At law.

This day came the defendants, by their attorney, Mr. G. W. Hazelton, and presented to the court their petitions in writing, as herein filed, duly verified by affidavit, setting forth that this suit was brought against them before Charles C. Rattinger, esq., justice of the peace for the city and county of Milwaukee, Wisconsin, as officers of the United States, to wit, collector of customs for the district of Milwaukee, and postmaster of the city of Milwaukee, together with a certificate of counsel thereto annexed, as required by law, and praying that said cause be removed to this court, and that a writ of certiorari may be issued according to law. Which petition is as follows, to wit:

Petition for certiorari.

Circuit court of the United States, eastern district of Wisconsin.

To the honorable the circuit court of the United States in and for the eastern district of Wisconsin:

The petition of John Nazro, of the city and county of Milwaukee, within said district, respectfully shows that the petitioner was on the first
3 day of January, A. D. 1877, and has since continued to be, and now is, an officer of the United States, appointed under and acting by authority of the revenue laws of the United States, to wit, a collector of customs for the district of and embracing the city of Milwaukee, in the

State of Wisconsin, in the said E. dist. of Wisconsin, appointed under and pursuant to the provisions of title 34 of the Revised Statutes of the United States.

That said petitioner was, on the 24th day of December, A. D. 1877, personally served with a summons issued out of a court of a justice of the peace for the city and county of Milwaukee aforesaid, signed by Chas. C. Rattinger, justice of the peace, which summons is directed to this petitioner and to H. C. Payne, and requires them to appear before the said Rattinger, one of the justices of the peace in and for said county of Milwaukee, at his office in said city of Milwaukee, on a day therein named, to wit, the 31st day of December, A. D. 1877, at nine o'clock in the forenoon, to answer to Mrs. Magdalene Von Cotzhausen, plaintiff, to her damage two hundred dollars or under, a copy of which summons is hereto annexed.

That said action was commenced and is being prosecuted, as your petitioner is informed and verily believes, for and on account of an act done by your petitioner under color of his said office and by virtue of the laws of the United States, particularly section 3082 Rev. Stat. of the
4 United States, defining and marking out his duty in the premises, in the doing of which act the other defendant, H. C. Payne, acted under and by authority of this petitioner as such officer, aiding and assisting him in respect thereof.

That this petition is made pursuant to the provisions of sec. 643 of the Revised Statutes of the United States.

That the act complained of as aforesaid, and on account whereof the said action has been commenced in said justice's court against your petitioner and said H. C. Payne, relates to the requiring the said Magdalene Von Cotzhausen to open a package sent to her at Milwaukee aforesaid from a foreign country, through the U. S. mails, believed to contain dutiable articles under the customs laws of the United States, and which in fact did contain articles subject to customs duty or tax, which had not been and was not paid.

Wherefore your petitioner prays that the said action may be removed into the circuit court of the United States for the eastern district of Wisconsin, pursuant to the statutes of the United States in such cases made and provided, and that a writ of certiorari may be issued to said Charles C. Rattinger, justice of the peace as aforesaid, and who issued the summons aforesaid, according to law.

And your petitioner will ever pray, &c.

Dated January 10th, 1878.

JOHN NAZRO.

5 EASTERN DISTRICT OF WISCONSIN, *ss:*

John Nazro, being duly sworn, says he is the petitioner named in the foregoing petition; that he has heard the same read and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters stated on information and belief, and as to those matters he believe the same to be true.

JOHN NAZRO.

Subscribed and sworn to before me this 11th day of January, 1878.

J. M. MILLER,
U. S. Com'r E. D. Wis.

The petition of H. C. Payne to the same court shows that he concurs in the foregoing petition of John Nazro, and adopts and makes the same his own so far as the same is or can be applicable.

That he acted in the matter set forth and referred in said petition under the authority and direction of said John Nazro and in his aid.

Dated January 10, 1878.

H. C. PAYNE.

E. DIST. OF WISCONSIN, *ss:*

H. C. Payne, being duly sworn, says he has read the foregoing petition signed by him, and that the same is true.

H. C. PAYNE.

Subscribed & sworn to before me this 11th day of January, A. D. 1878.

J. M. MILLER,
U. S. Com'r E. Dist. Wis.

6 EASTERN DISTRICT OF WISCONSIN, *ss:*

I, G. W. Hazelton, do certify that I reside in the city of Milwaukee, in said district; that I am an attorney and counsellor at law of the supreme court of the State of Wisconsin; that as counsel for the above-named petitioners I have examined the proceedings against them and have carefully enquired into all the matters set forth in the foregoing petitions, and that I believe the same to be true.

Dated January 10, 1878.

G. W. HAZELTON,
Counsel for Petitioners.

Copy of summons annexed to said petition.

MILWAUKEE COUNTY,
City of Milwaukee, ss:

The State of Wisconsin to the sheriff or any constable of said county:

You are hereby commanded to summon John Nazro and H. C. Payne, if they shall be found within your county, to appear before the undersigned, one of the justices of the peace in and for said county, at my office, in said city in said county, on the 31st day of December, A. D. 1877, at nine o'clock in the forenoon, to answer to Mrs. Magdalene Von Cotzhausen, plaintiff, to her damage two hundred dollars or under. Hereof fail not at your peril.

Given under my hand, at Milwaukee, this 24th day of December, A. D. 1877.

CHAS. C. RATTINGER,
Justice of the Peace.

7 Whereupon a writ of certiorari issued in duplicate to said justice requiring him to send to this court the record and proceedings in the above-entitled cause forthwith, as follows:

Writ of certiorari.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

[SEAL.] The President of the United States of America to Chas. C. Rattinger, justice of the peace in and for the city of Milwaukee, county of Milwaukee, in the State of Wisconsin:

Being informed that there is now pending before you a suit and prosecution, in which Mrs. Magdalene Von Cotzhausen is plaintiff and John Nazro and H. C. Payne are defendants, which suit was commenced in the said justice court for the city of Milwaukee against the said John Nazro and H. C. Payne, for and on account of acts done by them under and by virtue of the laws of the United States and section 3082 Revised Statutes, defining and making out their duty as collector of customs for the first collection district of Wisconsin and postmaster of the city of Milwaukee, in the State of Wisconsin; and that the said suit and prosecution was commenced by a summons issued out of the said justice court on the 24th day of December, A. D. 1877, and that said suit has not been tried; and

8 we being willing for certain reasons, that the said suit and prosecution, and the records and proceedings therein, should be certified by the said court and removed into our circuit court of the United States in and for the eastern district of Wisconsin, in the seventh circuit, do hereby command you that you certify and send the records and proceedings aforesaid, with all things concerning the same, to the said circuit court of the United States, together with this writ, so that you may have the same at the court-room, in the city of Milwaukee in the said district, forthwith, that the said circuit court may cause to be further done thereupon what of right and according to the laws of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the eastern district of Wisconsin, this 11th day of January, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the 102nd.

EDWARD KURTZ, *Clerk*,
By J. M. MILLER, *Deputy*.

Return of service of certiorari.

Certiorari returned; served on the within-named C. C. Rattinger, justice, by showing to him this writ and delivering to him personally a duplicate thereof, at Milwaukee, this twelfth day of January, A. D. 1878.

HENRY FINK, *Marshal*,
By W. A. NOWELL, *Deputy*.

Fees, $2.06.

9 January 16, 1878. Copy of record and proceedings before C. C. Rattinger, esq., justice of the peace for the city and county of Milwaukee, Wisconsin, in this cause, duly certified by said justice as his return to the writ of certiorari, with duplicate of said writ annexed thereto, filed, as follows:

Return of Justice Rattinger to writ of certiorari.

In justice's court.

MAGDALENA VON COTZHAUSEN }
vs.
JOHN NAZRO & H. C. PAYNE. }

In obedience to the annexed writ I certify and return the following proceedings had before me in the above-entitled cause.

I hereby agree to become security for costs in this action.

A. HERDEGEN.

The above security is hereby approved.

CHAS. C. RATTINGER,
Justice of the Peace.

1877, December 24th, summons issued returnable December 31st, 1877, at 9 o'clock a. m., and returned by Constable M. Alft, who duly served the within summons on the within-named defendants, by reading the same to each of them personally and leaving a copy in each of their possession, the 24th day of December, 1877.

1877, December 31st, at 9 o'clock a. m. suit called; at 10 o'clock a. m. plaintiff appeared by C. S. S. & S.; defendants in person. Plaintiff
10 filed complaint in writing and asks judgment thereupon against the defendants for $200 and costs of suit. Defendants deny the allegations of plaintiff's complaint, and at the request of defendants the court ordered plaintiff to give security for costs; and cause by consent of parties adjourned to this office to the 12th day of January, 1878, at 9 o'clock a. m.

1878, January 12th, at 9 o'clock a. m. suit called; at 10 o'clock a. m. parties appeared. Writ of certiorari served upon me; whereupon the papers in this action are transferred to the circuit court of the United States in and for the eastern district of Wisconsin, in the seventh circuit.

My fees, $2.00; Constable M. Alft, 1.50—$3.50. Return of papers, &c., to U. S. court, 1.00.

CHAS. C. RATTINGER,
Justice of the Peace.

And I hereby further certify that the annexed writ of certiorari was served upon me on the 13th day of January, 1878; that the foregoing is a correct and true copy of my docket in the above-entitled action, and that the accompanying papers are all the papers belonging to said action.

Dated Milwaukee, January 15th, 1878.

CHAS. C. RATTINGER,
Justice of the Peace.

11 MILWAUKEE COUNTY,
City of Milwaukee, ss:

The State of Wisconsin to the sheriff or any constable of said county:

You are hereby commanded to summon John Nazro and H. C. Payne, if they shall be found within your county, to appear before the undersigned, one of the justices of the peace in and for said county, at my office in said

city in said county, on the 31st day of December, A. D. 1877, at 9 o'clock in the forenoon, to answer to Mrs. Magdalene Von Cotzhausen, plaintiff, to her damage two hundred dollars or under. Hereof fail not at your peril.

Given under my hand, at Milwaukee, this 24th day of December, A. D. 1877.

CHAS. C. RATTINGER,
Justice of the Peace.

MILWAUKEE COUNTY, *ss:*

I duly served the within summons on the within named defendants, by reading the same to each of them personally and leaving a copy in each of their possession, in the city of Milwaukee, this 24th day of December, 1877.

Fees, $1.50.

MICHAEL ALFT, *Constable.*

MAGDALENE VON COTZHAUSEN
against
JOHN NAZRO, H. C. PAYNE.

1877, December 31st, at 9 o'clock a. m. suit called; at 10 o'clock a. m. plaintiff appeared by C. S. S. & S.; defendants in person. Plaintiff filed complaint in writing and asks judgment thereupon against the defendants for $200.00 and costs of suit. Defendants deny the allegations of
12 plaintiff's complaint, and at the request of defendants the court ordered plaintiff to give security for costs; and cause by consent of parties adjourned to this office to the 12th day of January, 1878, at 9 o'clock a. m.

1878, January 12th, at 9 o'clock a. m. suit called; at 10 o'clock a. m. parties appeared. Writ of certiorari served upon me; whereupon the papers in this action are transferred to the circuit judge of the United States in and for the eastern district of Wisconsin, in the seventh circuit.

My fees, $2.00; constable fees, M. Alft, 1.50—$3.50. Return of papers, &c., to U. S. court, 1.00.

Justice's court, before C. C. Rattinger, esq.,

MAGDALENA VON COTZHAUSEN
vs.
JOHN NAZRO & HENRY C. PAYNE.

The above-named plaintiff complains of the defendants as follows:

That on or about the last day of May, 1877, there came to the hands and possession of the above-named defendants, at the city of Milwaukee, through the United States mail, a small package, containing a flexible scarf-pattern, the property of and addressed to this plaintiff, being sent to her by her daughter-in-law from the city of Bonn, in Germany.

13 That said package and contents was of but nominal or trifling intrinsic value, but was highly estimated by this plaintiff for its novelty of design and texture, and as a kind token of regard from a near and esteemed relative.

That on or about the day aforesaid, the above-named defendants well knowing said premises, refused to deliver said package and contents to this plaintiff, although often demanded, and converted the same to their own use, to the plaintiff's damage of two hundred dollars.

F. W. COTZHOUSEN,
Plaintiff's Attorney.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

[SEAL.] The President of the United States of America to Chas. C. Rattinger, justice of the peace in and for the city of Milwaukee, county of Milwaukee, in the State of Wisconsin:

Being informed that there is now pending before you a suit and prosecution in which Mrs. Magdalene Von Cotzhausen is plaintiff and John Nazro and H. C. Payne are defendants, which suit was commenced in the said justice court for the city of Milwaukee against the said John Nazro and H. C. Payne for and on account of acts done by them under
14 and by virtue of the laws of the United States and section 3082 Revised Statutes, defining and making out their duty as collector of customs for the first collection district of Wisconsin and postmaster of the city of Milwaukee, in the State of Wisconsin; and that the said suit and prosecution was commenced by a summons issued out of the said justice court, on the 24th day of December, A. D. 1877, and that said suit has not been tried; and we being willing, for certain reasons, that the said suit and prosecution and the records and proceedings therein should be certified by the said court and removed into our circuit court of the United States in and for the eastern district of Wisconsin, in the seventh circuit, do hereby command you that you certify and send the records and proceedings aforesaid, with all things concerning the same, to the said circuit court of the United States, together with this writ, so that you may have the same at the court room in the city of Milwaukee, in said district, forthwith, that the said circuit court may cause to be further done thereupon what of right and according to the laws of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the eastern district of Wisconsin, this 11th day of January, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the 102nd.

EDWARD KURTZ, *Clerk*,
By J. M. MILLER, *Deputy*.

15 December 7, 1878. This day came the plaintiff, by her attorney, Mr. F. W. Cotzhausen, and filed her amended complaint as follows:

Amended complaint.

United States circuit conrt for the eastern district of Wisconsin.

MAGDALENE VON COTZHAUSEN, PL'FF,
vs.
JOHN NAZRO & H. C. PAYNE, D'F'TS.

The above-named plaintiff, for an amended complaint herein, shows and alleges:

That on or about the last day of May, 1877, there came to the hands and

possession of the above-named defendants, at the city of Milwaukee, through the United States mail, a small package containing a flexible scarf pattern, the property of and addressed to this plaintiff, being sent to her by her daughter-in-law, from the city of Bonn, in Germany.

That said package and contents was of but nominal or trifling intrinsic value, but was highly estimated by the plaintiff for its novelty of design and texture, and as a kind token of regard from a near and esteemed relative.

That on or about the day aforesaid, the above-named defendants, well knowing said premises, refused to deliver said package and con-
16 tents to this plaintiff, although often demanded, and converted the same to their own use, to the plaintiff's damage of two hundred dollars.

F. W. COTZHAUSEN,
Plaintiff's Attorney.

December 14, 1878. This day came the defendants, by their attorney, and filed their answer, as follows:

Answer.

U. S. circuit court, E. dist. of Wisconsin.

MAGDALENE VON COTZHAUSEN
vs.
HENRY PAYNE & JOHN NAZRO.

The defendants plead the general issue to the complaint herein, and give notice that they will offer in evidence, by way of defence to the action of the plaintiff herein, the facts and circumstances stated in the petition for the removal of the cause to this court.

T. W. HAZELTON,
Def'ts' Att'y.

Trial.

And afterwards, to wit, at a stated term of said court, begun and held according to law, at the city of Milwaukee, on the first Monday (being the seventh day) of October, A. D. 1878, and on the fifty-first day of said term, to wit, on the 16th day of December, A. D, 1878, present, the hon-
orable Charles E. Dyer, district judge, presiding, the following
17 proceedings were had, to wit:

MAGDALENE VON COTZHAUSEN
vs.
JOHN NAZRO & HENRY C. PAYNE. } At law.

This day came the parties, by their counsel, Mr. F. W. Cotzhausen appearing for the plaintiff and Mr. G. W. Hazelton, the district attorney, for the defendants, and the issue herein came on to be tried, whereupon a jury was called to try the same, who came, to wit, John Martin, Charles Borrows, G. J. Wilmot, Peter McKenzie, Courtland Bones, A. L. Clason,

William Shallock, Elisha Pearl, E. T. Sercomb, D. M. Stearns, M. L. Ayres and Andrew Mitchell, twelve free, honest and lawful men of the district, who where severally sworn and empannelled, and the trial not being concluded, the same was adjourned until to-morrow morning.

And afterwards, to wit, on the fifty-second day of said term, to wit, on the 17th day of December, A. D. 1878, the following proceedings were had, to wit:

Trial concluded and verdict.

This day came the parties by their counsel, and the trial of the issue herein was resumed; and the jurors of the jury aforesaid being charged by the court, retired to their room under the charge of a sworn officer, to consider of their verdict. And afterwards the said jurors of the jury came into court and rendered a special verdict in answer to the questions propounded by the court, and say as follows:

18 Question 1st. Was the article in question sent from a foreign country by mail, enclosed in a sealed envelope addressed to the plaintiff at Milwaukee, and was it transmitted by mail, thus enclosed, to its point of destination?

Answer. Yes.

Question 2nd. Were the contents of the package disclosed by any writing placed upon it by the sender?

Answer. Yes.

Question 3rd. Was the package received at the post-office in Milwaukee, and if so, was the collector of customs for this district notified of its receipt?

Answer. Yes.

Question 4th. Was the package placed in the hands of the plaintiff by a clerk in the post-office, in the presence of the deputy collector, and did she open it?

Answer. Yes.

Question 5th. Did the deputy collector of customs then seize the article in question, after it was so opened?

Answer. Yes.

Question 6th. Did the collector thereafter cause said article to be appraised by the appraiser for this collection district, and did he refuse to surrender it to the plaintiff without payment of the amount of such appraisal?

Answer. Yes.

Question 7th. Was the article sent by mail for the purpose or with intent on the part of the sender or the plaintiff to avoid the payment of duties thereon?

19 Answer. No.

Question 8th. What was the value of said article on the 21st day of May, 1877?

Answer. $4.00.

M. L. AYRES, *Foreman.*

And afterwards, to wit, on the sixty-first day of said term, to wit, on the 4th day of January, A. D. 1879, the following proceedings were had, to wit:

Motions for judgment.

This day came the plaintiff by her counsel and moved the court for judgment in her favor upon the special verdict of the jury. And came the defendants by their counsel and moved the court for judgment in their favor upon the special verdict of the jury. And it is ordered by the court that said motions be and hereby are continued to the January term.

And now at this same term, to wit, October term, A. D. 1879, and on the first day thereof, to wit, on the sixth day of October, A. D. 1879, present the honorable Charles E. Dyer, district judge, presiding, the following proceedings were had, to wit:

Order overruling plaintiff's motion for judgment & granting def'ts' motion.

MAGDALENE VON COTHZAUSEN
vs.
JOHN NAZRO & HENRY C. PAYNE. } At law.

This day came the parties by their counsel, and on consideration of the motions of both parties for judgment, upon the special verdict
20 of the jury, and the arguments of counsel thereon, it is ordered by the court that the motion of the plaintiff for judgment be and is hereby overruled, and that the motion of the defendants for judgment be and is hereby granted.

Judgment.

Whereupon it is considered and adjudged by this court now here that the said plaintiff take nothing by her writ, and that the said defendants do have and recover of the said plaintiff, Magdalene Von Cotzhausen, the sum of thirty-three dollars and seventy-six cents, their costs about their said defence in this behalf by them expended, and that they have execution therefor.

Judgment roll signed October 6th, A. D. 1879. Costs $33.76.

EDWARD KURTZ, *Clerk.*

October 6, 1879. Bill of exceptions filed as follows:

Bill of exceptions.

United States circuit court for the eastern district of Wisconsin.

MAGDALENA VON COTZHAUSEN, PLAINTIFF,
against
JOHN NAZRO, COLLECTOR, & H. C. PAYNE, postmaster, defendants. } Bill of exceptions.

Be it remembered that this cause came on to be tried on the 16th
21 day of December, 1878, and a jury being duly empannelled and sworn, the honorable Charles E. Dyer, judge, presiding, the following proceedings were had: The plaintiff offered in evidence the depositions of the plaintiff, who testified that she was living at the city of Milwaukee;

that she was not engaged in any kind of business, but living at her leisure; that she devoted herself more or less, for the entertainment of herself and friends, to a variety of lady's handiwork; that in the month of May, 1877, a sealed package, addressed to her, came by mail to the Milwaukee post-office; that the same contained a new scarf-pattern, knit of wool, sent to her by her daughter-in-law, the wife of a revenue official in Prussian service, stationed at Bonn, Rhine-Prussia; that the scarf was not of any particular value, except for its novelty of design, and by reason of coming from an affectionate member of her family. That she was notified by the postmaster of its arrival; that she went to the post-office, was asked to receipt for the package, and thereupon to open it; that a paper was handed to her for signature, which she signed; that the deputy collector of customs, who had been notified by the post official to be present, then took it from her hands, and that, although repeatedly thereafter requesting its return to her, she had been refused the possession unless she paid six dollars.

F. W. Cotzhausen, another witness on part of the plaintiff, testified that at the request of his mother he called upon the postmaster and collector personally and by letter to ascertain the reason for their action and the cause of such withholding; that the postmaster referred him to the collector; that at the collector's office he was informed the package had been marked, "suspected liable to customs duty," when it arrived at the post-office in Milwaukee; that being so stamped it became their duty to seize, and when found to contain an article subject to duty the package had to be confiscated; that as to the article in question, the same had been appraised and could not now be delivered up, unless on payment of its appraised value, adding duty, being in the aggregate six dollars.

That he, the witness, thereupon offered to pay the duty on the scarf, if any, but was informed that delivery on payment of duty could not be had.

That a few days thereafter he called again, and was informed that the package could only be delivered on payment of the six dollars required for appraised value and duty, or if the plaintiff chose, she might apply to the Secretary of the Treasury for a remission of the forfeiture. That he, the witness, peremptorily refused to take the latter course and beg for a remission of forfeiture; that he applied by letter to the collector again for a surrender of the package and the reason for its detention, and that he was informed the package was detained by authority of the United States, and would be surrendered only on payment of six dollars. A profert of the package was also made in court, and it appeared that the same was marked by American stamp, "suspected liable to customs duty," and that on the outside or face of the package, above the address, in the German language and handwriting of the party writing the address, the contents of the package was disclosed as being "a novel pattern without particular value." Whereupon the plaintiff offered and introduced in evidence the letters hereto annexed as exhibits, viz, one from Cotzhausen, Sylvester & Scheiber to John Nazro, collector, dated June 18, 1877; one from John Nazro, collector, to Cotzhausen, Sylvester & Scheiber, dated June 20, 1877; one from Cotzhausen, Sylvester & Scheiber to John Nazro, collector, dated June 30, 1877; and

one from John Nazro, collector, to Cotzhausen, Sylvester & Scheiber, dated June 30, 1877; and rested.

On part of the defense the defendant, H. C. Payne, testified that he was the postmaster and heard of this case, but that he did not think he ever saw the package or article himself. That the package came as a registered package, No. 928, and was receipted for by plaintiff; that when found upon its arrival to be stamped, "suspected liable to customs duty," it was his duty to notify the collector, and that he was notified. A. W. Hall, deputy collector of customs, testified that he was informed by the Post Department of the arrival of this package; that he seized it; that he informed the plaintiff, by aid of an interpreter, that there were two courses to pursue—either to pay its appraised value or apply to the Secretary for permission to pay the duty and take the package; that
24 he had no discretion to do anything else. That the plaintiff did not understand much English, but said that she would see about it. That afterwards Mr. F. W. Cotzhausen called to be informed as to the matter; that he was shown the package, and told that he could pay appraised value and duty, being six dollars, or apply to the Secretary of the Treasury for a remission; that he told Mr. Cotzhausen such applications were often made and granted as of course; that Cotzhausen objected to writing to Washington, and insisted the matter could be settled here; that Mr. Cotzhausen did not offer to pay the duty if the property were surrendered.

That the article was sent to J. R. Brigham, government appraiser, for appraisal; that it was classified as made of wool—a knit woolen shawl; that it was appraised at four dollars, but that no written report of appraisal could be found. That the package ever since had remained in the hands of the collector; that the seizure was reported to the Secretary of the Treasury, and that no steps had been taken to procure a judicial adjudication thereupon. That the authority under which he claimed to act in this case was instruction of Treasury Department, dated May 3, 1877, and numbered 3228, contained in Decisions of Treasury Department for the year ending December 31, 1877; that the six dollars were made up as follows: Appraised value, $4.00; thirty-five per cent., $1.40; and fifty cents per lb., $.50—total, $5.90. That the weight was esti-
25 mated at one pound, and the duty assessed under sec. 2504, schedule L, class 3, act of Congress March 2, 1867, 50 cents per pound and 35 per cent. ad valorem.

He further testified that he informed plaintiff that the package was detained on account of violation of law in sending it through the mail; that he ordered plaintiff to open the package; that she did so, and that he then took it away from her; that the article had not then been appraised, and that plaintiff did not then know what she was to pay in order to get the article; further, that the package was seized without regard to the intent of the party sending, or the party expected to receive it; and that he did not remember, but thought it likely that he refused to surrender the article on payment of the duty.

Henry Scheide, the register clerk in the post-office, testified that the package was received at the post-office and treated in the customary manner; the party was notified, and also the collector; that the package was receipted for and delivered to the plaintiff, who opened it in the deputy collector's presence, who thereupon seized it.

John Jobse, another employee in the post-office, testified that he acted as interpreter between Mr. Hall and the plaintiff; that the package was delivered to plaintiff in presence of the deputy collector; that she opened it, and was told the package was liable to duty, and that it could not be delivered to her until appraised; that when calling again she was
26 informed the whole sum to be paid was six dollars; that he could not call to his mind whether Mr. Hall told the plaintiff to write to the Treasurer.

Jerome R. Brigham, government appraiser, testified that at the request of the collector he appraised the article and made a report; that he called it a knit shawl, composed of wool; that he appraised it at four dollars; that his profession was that of a lawyer.

The defendant thereupon offered and introduced in evidence the record of seizure on the collector's books, and the regulations and instructions of the Treasury Department, all of which are hereto annexed as exhibits.

Whereupon both parties rested.

The foregoing was all the evidence given by either party on the trial of said case.

Exhibits referred to in above testimony.

[Office of Cotzhausen, Smith, Sylvester & Scheiber, attorneys and counsellors at law, corner East Water & Wisconsin st's]

MILWAUKEE, *June* 18, 1877.

JOHN NAZRO, Esq., *Collector of Customs:*

SIR: About a month ago there was received by your office, from
27 the postmaster at Milwaukee, a small package sent from Germany by mail to this city, addressed to Mrs. Magdalene Von Cotzhausen, Milwaukee, and said to contain a scarf pattern. The party to whom the package is addressed complains of great annoyance and vexation, to which she has submitted at the post-office and custom-house without being able to procure its delivery. The package is said to be confiscated by you, and now to be held as smuggled goods. Six dollars and some cents we understand to be exacted by your office as a condition for its delivery to the owner. If we are correctly informed as to the facts, this would seem to be a case deserving public attention. It is to us a matter of great curiosity to know by what right the U. S. Government, through your office, now retains said package, and upon what theory the U. S. officials can seize upon a package as containing smuggled goods when the contents is marked on the outside, and the package came through the U. S. mail and its European connection to this country. Will you favor us by an early and official answer as to the further pleasure of your department?

Yours,

COTZHAUSEN, SMITH,
SYLVESTER & SCHEIBER.

28 CUSTOM-HOUSE, MILWAUKEE, WIS.,
Collector's Office, June 20, 1877.

Messrs. COTZHAUSEN, SMITH, SYLVESTER & SCHEIBER,
Attorneys and Counsellors at law, Milwaukee, Wis.:

GENTLEMEN: Your letter of 18th inst., referring to a package retained

at this office for violation of the revenue laws, and claimed as the property of Mrs. Magdalena Von Cotzhausen, is received.

Any communication from the party in interest, addressed to this office, referring to the matter in hand, or from any person authorized to act in her behalf, with the authority attached to the communication, will receive respectful consideration and official answer.

I must decline to indulge in explanation of official acts to parties not known by me to be entitled thereto.

Very respectfully,

JOHN NAZRO,
Collector of Customs.

[Office of Cotzhausen, Smith, Sylvester & Scheiber, attorneys and counsellors at law, cor. East Water & Wisconsin st's.]

MILWAUKEE, *June* 30, 1877.

JOHN NAZRO, Esq., *Collector of Customs:*

SIR: We enclose to you, as requested, the written authority from Mrs. Magd. Von Cotzhausen to act in her behalf in relation to mail package said to have been confiscated. May we now request an official
29 answer to our communication of 18th inst.?

The case seems to grow more and more interesting, and we request your early attention to the same.

Yours,

COTZHAUSEN, SMITH,
SYLVESTER & SCHEIBER.

CUSTOM-HOUSE, MILWAUKEE, WIS.,
Collector's Office June 30, 1877.

Messrs. COTZHAUSEN, SMITH, SYLVESTER & SCHEIBER,
Attorneys at Law:

GENTLEMEN: Your letter of this date is at hand. Inasmuch as Mrs. Von Cotzhausen has placed her matter in your hands as her attorneys, I have nothing more to say than that you can have the package addressed to Mrs. Magdalene Von Cotzhausen upon payment of $6.00 and her order for the same, the amount of $6.00 being the appraised value of same. I am acting under my instructions. You are at liberty to appeal to the Hon'l Secretary of the Treasury, John Sherman, Washington, D. C.

Very respectfully,

JOHN NAZRO,
Collector of Customs.

30 *Extract from record of seizures.*

Date of seizure.	No.	Where seized.	By whom seized.	From whom.	Informer.
1877. May 21	21	Milwaukee, Wis...	A. W. Hall..	M. Van Cotzhausen	Postmaster .....

Description of m'd'se.	Foreign value.	Home value.	Act & section violated.	Reported to solicitor.	Reported to dist. att'y.	Date of authority.	Remarks.
1 worsted shawl (knit)..	.....	$6 00	Sec. 3082 R. S....				

31 *Regulations and instructions of Treasury Department.*

(3228.)

IMPORTATIONS THROUGH THE MAIL.

TREASURY DEPARTMENT, *May* 3, 1877.

It appears from official reports received from various officers of this department, that articles from foreign countries are frequently imported through the mail, to the loss of the revenue.

Such importations, with certain exceptions, are illegal, and the articles become subject to seizure and forfeiture for a violation of the revenue law.

Collectors of customs will therefore seize all such packages (with the exception of those hereinafter specified) delivered to them under the existing regulations of the Postmaster-General, embodied in printed decision No. 2375.

If the importation be less than fifty dollars in value the collector will deliver the goods to the party entitled thereto, on payment of their appraised value, to be accounted for in same manner as the proceeds of other forfeitures; and if of fifty dollars or more in value, he will report the case to the department for special instructions.

Collectors of customs will include all such seizures in their regular reports.

Importations by post from Canada may be delivered on payment of duties, if they consist of pamphlets, magazines, books, maps, plans, engrvings, drawings, photographs, lithographs, sheets of music, &c., and
32 patterns and samples of merchandise, including grains and seed.

Patterns and samples of merchandise so imported from Canada must not exceed the weight of eight ounces, must not be closed against inspection, and must always be so wrapped or enclosed that they may be readily and thoroughly examined.

JOHN SHERMAN, *Secretary.*

COLLECTORS OF CUSTOMS and others.

(3075.)

IMPORTATIONS BY MAIL.

TREASURY DEPARTMENT,
January 16, 1879.

SIR: Your letters of the 26th, 27th, and 29th ultimo have been received, reporting the arrival and detention of several packages containing dutiable goods, imported through the mail at your port, and asking instructions.

You are informed that such goods are liable to forfeiture, under section 3082 Revised Statutes, for being imported in violation of the postal treaty concluded at Berne, October 9, 1874, and of section 2809 Revised Statutes, and you will therefore seize them, directing the applicants to apply to the department for relief under title LXVIII Revised Statutes.

Very respectfully,

H. F. FRENCH,
Assistant Secretary.

SURVEYOR OF CUSTOMS, *Omaha, Neb.*

33 (2375.)

IMPORTATION THROUGH THE MAILS.

The following regulation of the Post-Office Department, having been amended with the concurrence of the Treasury Department, is now published for the information of customs officers:

[Official.]

An amended regulation in order to further protect the customs revenue from frauds practised through the mails.

POST-OFFICE DEPARTMENT,
Washington, D. C., July 9, 1875.

Ordered that section 52, chapter 3, of the regulations of the Post-Office Department, issued by authority of the Postmaster-General on the 5th of April, 1873, as modified by the order of the Postmaster-General of January 3, 1874, be modified and amended so as to read as follows:

SECTION 52. When letters, sealed packages, or packages the wrappers of which cannot be removed without destroying them, from a foreign country, are received through the mail at any post-office, and the postmaster has reason to believe that such letters or packages contain articles liable to customs duty, he shall immediately notify the customs officer of the district in which his office is located, or the customs officer designated by the Secretary of the Treasury to have access to the several post-offices to examine the mails arriving from foreign countries, of the receipt of such letters or packages, and the names of the persons to whom the same
34 are addressed, and retain such letters or packages a reasonable time for the purpose of allowing such customs officer to examine them. Letters registered or ordinary or sealed packages, or packages the wrappers of which cannot be opened without destroying them, can only be

opened by the parties addressed; and when such letters or packages are received at the office of destination, stamped as hereinafter provided, the parties addressed should be notified by the postmaster at the office of delivery that such a letter or package has been received at his office, believed to contain articles liable to duty, and that the same will be returned to the office of the country from whence it came unless the person to whom it is addressed shall appear at the post-office at a time in the said notice to be designated, not exceeding twenty days from the date of said notice, and receive and open the said letter or package in the presence of an officer of the customs, and postmasters are hereby instructed and directed to extend to custom-house officers all proper facilities, and permit customs officers specially designated for that purpose by the Secretary of the Treasury to have access at all times to their respective offices, for the purpose of examining mail matter received from foreign countries in order to protect the customs revenue from frauds practised through the mails: Provided, however, That nothing herein contained shall authorize or allow customs officers to seize or take possession of any letter or package whilst
35 the same is in the custody of a postmaster, nor until and after the same has been delivered to the person to whom it is addressed, unless the package when examined is found to contain articles liable to customs duty: And provided further, That no letter or package which is believed to contain articles liable to duty shall be detained at an intermediate office, when the discovery inducing that belief is made at such office, more than twenty-four hours, nor at the office of delivery a longer period of time than may be necessary for the person to whom such letter or package may be addressed to appear, after the notice hereinbefore provided has been given; but when an unsealed package is found on examination to contain an article or articles liable to customs duty, it should be delivered to the proper officer of the customs, and the postmaster should inform the person to whom it is addressed of its arrival in the mails and its delivery to the customs officer; and it shall be the duty of the postmaster at an office at which a letter or sealed package (addressed to an interior office) suspected of containing articles liable to customs duty shall arrive in the mails from a foreign country, before forwarding such letter or package to the office of destination to cause the envelope or wrapper thereof to be plainly stamped across its face with the words "suspected liable to customs duty."

MARSHALL JEWELL,
Postmaster-General.

36 (2321.)

IMPORTATION THROUGH THE MAILS.

TREASURY DEPARTMENT, *June* 29, 1875.

SIR: * * * * * *

I may add that the importation of dutiable articles into the United States by means of newspapers or letters through the mails has no sanction in law, and, if attempted with intent to evade the payment of duties, subjects the articles to forfeiture and the parties making such attempt or knowingly receiving such articles to prosecution for the penalties provided by law.

I am, very respectfully,

B. H. BRISTOW, *Secretary.*

Hon. GEORGE M. ROBESON,
Secretary of the Navy, Washington, D. C.

(2648.)

ARTICLES IMPORTED THROUGH THE MAILS.

TREASURY DEPARTMENT, *February* 6, 1876.

SIR: The department is in receipt of your letter of the 3rd instant, relating to the disposition which should be made of articles received through the mail.

You are informed that articles so imported, if not provided for in our postal treaties, are illegally imported, and prima facie are subject to forfeiture. For that reason it is necessary that instructions for the de-
37 livery of the packages should be obtained in each case from the department, the collector not being authorized to waive a detention of the property.

Respectfully,
By order.

C. F. BURNHAM,
Assistant Secretary.

DEPUTY COLLECTOR, *St. Paul, Minn.*

(2812.)

IMPORTATIONS THROUGH THE MAIL.

TREASURY DEPARTMENT, *May* 16, 1876.

The general postal union concluded at Berne October 9, 1874, is not construed by this department as exempting from customs duty books or articles received in the mail from postal union countries, which, by the laws of the United States, are subject to duty, or as changing in any particular the course of proceedings for collection of customs duties on such articles prescribed by section 52 of the post-office regulations, as modified by the order of the Postmaster General, dated the 9th of July last, and embodied in the printed decision of this department, No. 2375.

Collectors and other officers of the customs are therefore instructed to treat all importations of salable books, and of music and other printed matter imported for sale, as if such importations consisted of ordinary merchandise.

Respectfully,
By order.

C. F. BURNHAM,
Assistant Secretary.

COLLECTORS OF CUSTOMS and others.

38 Whereupon the court submitted to the jury a form of special verdict, covering all matters in controversy on said trial and deemed material to the case; and the cause having been argued by counsel and submitted to the jury, the same, after due deliberation, returned into court, and their verdict was thereupon received and entered of record.

And because none of the aforesaid matters appear of record, the said judge has caused all and singular the same to be made manifest, and certified to by this bill of exceptions.

CHARLES E. DYER, *Judge.* [SEAL.]

March 6, 1880. This day came the plaintiff, by her attorneys, and filed the bond of F. W. Cotzhausen and Fred. Scheiber, in the sum of two hundred and fifty dollars, conditioned that she shall prosecute a writ of error to effect, and answer all damages and costs if she fail to make her plea good; which bond is approved by the district judge, and is as follows:

Bond for costs on writ of error.

Know all men by these presents that we, F. W. Cotzhausen and Frederick Scheiber, both of the city of Milwaukee and State of Wis-
39 consin, are held and firmly bound unto John Nazro and H. C. Payne, of the same place, in the full and just sum of two hundred and fifty dollars, to be paid to the said John Nazro and H. C. Payne, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this fifth day of March, in the year of our lord one thousand eight hundred and eighty.

Whereas lately, at a general term of the circuit court of the United States for the eastern district of Wisconsin, in a suit depending in said court between Magdalene Von Cotzhausen as plaintiff, and John Nazro and H. C. Payne as defendants, judgment was rendered against the said plaintiff, Magdalene Von Cotzhausen, and the said plaintiff having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said John Nazro and H. C. Payne, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such that if
40 the said Magdalene Von Cotzhausen shall prosecute said writ of error to effect, and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

F. W. COTZHAUSEN. [L. S.]
FRED. SCHEIBER. [L. S.]

Sealed and delivered in presence of—
GEORGE SYLVESTER.
AUG. RICHTER, Jr.

Approved by—

CHAS. E. DYER, *Judge.*

Whereupon a writ of error and citation issued, and a copy of said writ of error lodged for the defendants in error.

41 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office, being a full and com-

plete transcript of the record in the case of Magdalene Von Cotzhausen vs. John Nazro et al.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in said district, this 16th day of March, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States the 104th.

[SEAL.] EDWARD KURTZ, *Clerk.*

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of America for the eastern district of Wisconsin, greeting:

[SEAL.] Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court of the United States of America for the eastern district of Wisconsin before you, between Magdalene Von Cotzhausen, plaintiff, and John Nazro and Henry C. Payne, defendants, a manifest error hath happened, to the great damage of the said Magdalene Von Cotzhausen, as by the complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error that of right and according to law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this sixth day of March, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States the 104th.

EDWARD KURTZ,
Clerk U. S. Circuit Court, East'n District of Wisconsin.

43 THE UNITED STATES OF AMERICA, *ss:*

To John Nazro and Henry C. Payne, greeting:

[SEAL.] You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Wisconsin, wherein Magdalena Von Cotzhausen is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Charles E. Dyer, district judge of the United States for the eastern district of Wisconsin, at the city of Milwaukee, in

said district, this 6th day of March, A. D. 1880, and of our Independence the 104th.

CHAS. E. DYER, *Judge.*

I accept service of the above citation this 12th day of March, A. D. 1880.

G. W. HAZELTON,
Att'y for Defendants.

(Indorsement on cover:) No. 200. Magdalene Von Cotzhausen, plaintiff in error, vs. John Nazro and Henry C. Payne. E. Wisconsin C. C. U. S. Filed 20th March, 1880.

2922——3

o

17-215

OFFICE SUPREME COURT U.S.
FILED
JAN 2 1883
JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

No. 200.

MAGDALENE VON COTZHAUSEN, PLAINTIFF IN ERROR.

vs.

JOHN NAZRO AND HENRY C. PAYNE.

In error to the Circuit Court of the United States, for the Eastern District of Wisconsin.

BRIEF AND POINTS OF PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

No. 200.

MAGDALENE VON COTZHAUSEN, PLAINTIFF IN ERROR.

vs.

JOHN NAZRO AND HENRY C. PAYNE.

In error to the Circuit Court of the United States, for the Eastern District of Wisconsin.

BRIEF AND POINTS OF PLAINTIFF IN ERROR.

(References are to marginal page.)

STATEMENT OF CASE.

Action for the conversion of a *registered* mail package, sent in May, 1877, from Germany to the address of the plaintiff in error, at Milwaukee, Wis. The defendants are collector of customs and postmaster respectively, at said place. The correspondence at pages 27-29, shows how this action originated. Delivery of the mail package was peremptorily refused, unless on payment of $6.00, its appraised value, duty added. The plaintiff in error respectfully declined to petition the Secretary of the Treasury to remit the alleged forfeiture as *a matter of favor* (22); as the government took no steps whatever to procure judicial action on such seizure, (24) while detaining the package from the addressee, the plaintiff in error, after a lapse of six months and more, commenced this action by the service of a summons from justice's court. The case was removed on certiorari into the U. S. Circuit Court, where it was tried in December, 1878.

The declaration and plea will be found at pages 15-16. The jury returned a special verdict (18). The evidence is preserved at length by bill of exceptions (21-26).

The jury found that *this was not a case of clandestine importation;* that the *contents of the package was clearly disclosed by its endorsement* (18). On the outside or face, above the address, in the German language and hand writing of the party writing the address, the words appeared, "*a novel pattern without particular value*" (23).

The learned district judge, however, was of the opinion that the package, being subject to customs duty, was irregularly admitted to the mail, and could therefore be lawfully seized and withheld, *even if the elements of fraud or guilty knowledge were altogether wanting.* Consequently he ordered judgment upon the verdict in favor of the defendants (20). There was no claim made on part of the plaintiff in error, for anything beyond nominal damages; the object of the litigation being mainly to test the authority of the defendants, in causing this registered package to be seizcd and withheld until the payment of six dollars.

FACTS PROVEN.

The following is a correct summary of the whole case as preserved by the bill of exceptions and finding, to wit:

The plaintiff in error resides at Milwaukee; she is not engaged in any business, but lives at her leisure; for the entertainment of herself and friends she devotes herself, more or less, to a variety of lady's-handiwork. In May, 1877, her daughter-in-law sent her by mail from Germany a small package, containing a new scarf-pattern, knit of wool. The pattern was not of any particular value, except for its novelty of design and by reason of coming from an affectionate relative abroad. There is no pretense that it was intended as an article of merchandise or for market. The package was "*registered.*" It truly *disclosed upon its face in plain words its contents.* It was therefore *specially admitted* to the privileges of the foreign mail. When it arrived at Milwaukee, it bore a postal endorsement "*suspected, liable to customs' duty.*" The plaintiff in error was informed by the postmaster of its arrival; she was made to receipt for the same, and then the deputy collector who was notified by the postmaster, and present, ordered the plaintiff to open the package, and thereupon seized it.

The scarf was handed to the government appraiser, (our late city attorney Brigham), who classified it as coming under sec. 2504, Schedule L. Class 3 (page 25).

Appraised value	$4.00
35 per cent. ad valorem.....	1.40
50 cents per lb....	.50
	$5.90

The *plaintiff in error offered to pay the duty* (22, 25); but the collector refused to surrender, unless on payment of *six dollars*, which was said to be its appraised value incl. duty (22, 24, 25, Letter of Nazro 29). No further action was taken; no written report of appraisal can be found (24); the record of seizure at page 30 contains all official evidence of this transaction and the package still remains in the hands of the defendants without any judicial forfeiture being asserted or other proceedings in that behalf (24). The plaintiff still waited for six months after the collector's written refusal to surrender (29), before she commenced this action.

The defendants seek to justify on ground of certain regulations and decisions of the Treasury Dept. and Postmaster General, which are set forth at pages 31–37, particularly Circular No. 2375 at page 33.

ASSIGNMENT OF ERRORS.

1. The seizure and forfeiture, under thecustoms laws, of mail matter of insignificant value, coming from foreign countries within the Postal Union, when the same is openly admitted and not clandestinely imported, is a violation of the Treaty of Berne and of our rights under the same.

2. Whether a letter or package (the contents whereof is truly disclosed) is entitled to be admitted to the privileges of the foreign mail and to be accordingly registered, transported and delivered, is a question for the office of origin to decide, and its decision on that subject is conclusive upon the postal authorities at the place of destination.

3. Even if *erroneously* admitted to the mail, the right to assert a forfeiture does not exist. The article, if not properly admitted under said treaty, must be returned to the place where it came from, or, to say the least, delivered up to the addressee on payment of duty.

4. The right to assert a forfeiture does not exist under our laws independent of an actual fraudulent intent to evade customs duty.

5. The erroneous instructions of the Treasury or Mail Departments do not justify a withholding of this package on part of the defendants.

6. The refusal to surrender, unless on payment of appraised value and duty added, was a wrongful conversion.

7. The amount exacted as a condition of surrender, was in excess of the valuation and customs duty.

8. The judgment is not supported by the finding, and ought to be for the plaintiff in error.

ARGUMENT.

I.

The seizure and forfeiture under the customs laws of mail matter of insignificant value, coming from foreign countries within the Postal Union, when openly admitted and not clandestinely imported, is a violation of the Treaty of Berne and of our rights under the same.

While the amount in litigation is but insignificant, the case at bar involves some important principles, which require speedy judicial construction. The decision of the court below has attracted considerable attention, at home and abroad. In support of the first proposition, assigned as error, we beg to quote verbatim from a letter, received by us from a prominent gentleman in England immediately after the publication of the decision of the Honorable district judge.

LONDON, No.— Trafalgar Square,
NOV, 20, 1879.

DEAR SIR:

I have to-day seen in the Chicago Legal News of 25 Oct. a report of the action in the U. S. Circuit Court of Wisconsin, *Von Cotzhausen vs. Nazro and others.*

I am not a lawyer, and I have had no training as a professional man, but I have some notions on the subject of this action, which I take pleasure in repeating to you *on the clear understanding that, if any of these hints are used by you, my name shall not be coupled with them.*

Both parties in this action seem to have looked only to the question of the receiving of the package by the addressee, and both parties seem to me to have drifted quite away from the treaty *rights* of the sender and of the addressee and to have got lost in the fringe of the subject. The acts of congress, local postal orders, treasury orders, American law decisions, and everything outside of the treaty, appear to me to be wholly inoperative, as the provisions of the treaty are in themselves ample for the execution or carrying out of all its stipulations.

The digest of the published opinions of the Attorney General, revised edition, Washington 1877, quotes at page 228, Cushing 1854: "Semble, a "treaty made conformably to the constitution, in substance and form, has "the effect of repealing all pre-existing Federal law in conflict with it, "whether unwritten, as the law of nations or admiralty, or written, as legis- "lative statutes."

"At any rate, if the effect of a treaty on existing statutes admit of doubt,

"congress never has failed to pass acts requisite to give effect to any treaty, "not containing provisions incompatible with the constitution."

The countries comprising the general Postal Union, were Austro-Hungary, Azores, Belgium, Denmark, Egypt, France, Germany, Gibraltar, Great Britain, Greece, Italy, Luxembourg, Madeira, Malta, Marquesas Islands, Netherlands, Norway, Persia, Portugal, Roumania, Russia, St. Pierre-et-Miquelon, Servia, Spain, Sweden, Switzerland, Tahiti, Turkey, and the United States of America.

The treaty was the supreme law of all these countries, and contains no provision for its modification or amendment by the congress of the United States. Our own recent opinions growing out of the Lawrence, Winslow, and similar cases, and the acts of the British parliament, gave us very clear notions of treaty rights quite independent of local or municipal laws.

Article 2 of the Berne treaty, general Postal Union, stipulates to what the treaty *does* extend, and article 25 of detailed regulation stipulates to what the treaty *does not extend*, viz: "There shall *not be admitted* for convey-"ance by the post, any letter or other packet, which may contain either "gold or silver money, jewels or precious articles, or any other articles what-"ever liable to custom duties."

Article 2 stipulates that the *treaty extends to patterns of merchandise* among other things. It is possible that this shawl in question, which had never been sold or offered for sale and was not intended for sale, might or might not fairly be a *pattern* within the meaning of the treaty, but the definition in this case is of little consequence, as the contents of the package is admitted to have been marked on it in Germany, and it appears the office of origin is by the treaty to decide what matter is admissible to the mails. Detailed regulations, article 12, paragraph 5, says: Patterns, which are not in accordance with the requisite condition, shall not be forwarded; and article 3 detailed regulations, declares that every article, which is not *at the office of origin* stamped "T"—tax to be paid—shall be considered as paid to destination. Article 16, detailed regulations, requires that the correspondence which shall have been paid, and which shall not be delivered *from whatever cause*, shall be returned immediately through the respective offices of exchange *without any claim.*

Any dropped stitches in the shawl or in the treaty, seem to have been picked up in this requisition to return everything, not delivered *from whatever cause*, and no loop-hole, in any possible contingency is left, *through which to make the mails a channel for conveying dutiable merchandise.*

The United States was the only government in the Union, that seriously took up the ground of dealing with goods by mail and holding them to be liable to duty. The question was by the United States referred to the International Bureau, and the International Bureau's adverse decision is announced in the American Post Master General's Annual Report 9, Nov. 1877, page XVI. The reference to the International Bureau would from this Annual Report, appear to have been confined to books, but the decision seems explicit, that the Treaty does not authorize the collection of customs duty, and hence points out the necessity of returning all undeliverable matter. I have not at the moment before me any paper, showing whether this reference to the International Bureau was before or after May 1877, when your package was seized.

An argument under consideration of some of the governments composing the Postal Union, at about the time of this reference, was upon the nature of the contract, that was entered into between the individual sender of a packet on the one part and the Postal Union on the other. Your parcel, for instance, was offered in Germany for transmission to a destination within the Postal Union, and being registered, was specifically *admitted* to the mails; payment was taken for transmitting it to its destination by cancelling the stamps which the sender had purchased, and so a contract was absolutely completed and its obligations upon the Postal Union could be discharged only by the delivery of the package to the addressee, or by the return of it to the sender; and if returned the treaty stipulates it should be returned *without any claim*. These words have been held to mean substantially that, if the office of origin erroneously admitted matter to the mails and the government of the destination of the matter returned it, the value of the cancelled stamps should be refunded to the sender, as the Postal Union had not performed a service for which it contracted, upon taking payment for delivering the package free to the addressee.

It seems to me the treaty is complete in itself and hence the local laws of Germany and the United States have nothing whatever to do with the subject. The treaty seems to call definitely for the delivery of the *registered* packet to the addressee, for the separate discharge of the *registration fee*; or for the return of the package to the sender *without any claim*, and the refunding of the value of the cancelled stamps by reason of the Postal Union not having fulfilled its contract, for which it took money, as is evidenced by the cancelled stamps.

In the matter of books by mail our treaty *rights* are very explicit and the educated classes in the West, when they are informed of their rights, and

that they can have book packages, up to four pounds in weight, from abroad at the postage of eight cents a pound, they will appreciate this great educational machine.

If anything more is printed on this subject or in your action, I shall esteem it a favor, if you will kindly favour me with copies.

I am, dear sir, your obedient servant,

P. P.

Commentaries, beyond what is said above, are hardly needed. The language of the treaty is plain:

Treaty concerning the formation of a General Postal Union, signed at Berne, Oct. 9, 1874.

Art. II. "The stipulations of this Treaty shall extend to letters, post cards, books, newspapers and other printed papers, *patterns of merchandise*, and legal and commercial documents, originating in one of the countries of the Union and intended for another of these countries."

Art. IX. *Neither the senders nor the addressees* of letters and other postal packets *shall be called upon to pay*, either in the country of origin or in that of destination, *any tax* or postal duty, other than those contemplated by the articles above mentioned.

The detailed regulations for the execution of such treaty provide:

Art. XII. "Patterns of merchandise shall only be admitted to the benefit of reduced postage which is extended to them by Art. IV. of the Treaty under the following conditions:

"They must not have any salable value, nor bear any manuscript writing other than the name of the trade or profession of the sender, the address of the person, for whom the packet is intended, a manufacturer's or trade mark, numbers and prices."

"Patterns, which are not in accordance with the requisite conditions, shall be charged as letters, except those which are *valuable*. The letter *shall not be forwarded*, nor those the conveyance of which would be attended with risk or danger."

Art. XXV. "*There shall not be admitted for conveyance* to the post any letter or other packet, which may contain either gold, silver, money, jewels or precious articles, or *any other article whatever, liable to customs duty*."

Art. XV. of the Treaty also provides for an *International Bureau*, charged (among other things) with the duty of giving at the request of the parties concerned, an *opinion upon questions in dispute*, and in general of considering and working out all questions in the interest of the Postal Union.

This International Bureau is organized under detailed regulations, Art. XXVII.

Subsequent to this treaty cases of importing by mail, articles subject to customs, arose frequently and seem to have given cause to the various instructions of the Secretary of the Treasury and Postmaster General, which will be found at pages 31–37 of the printed case, under which the defendants seek to justify their wrong. The first one, circular No. 2321, at page 36, under date June 29, 1875, by its very language still made the forfeiture of dutiable articles depend *upon the intent to evade the payment of duties*, in harmony with the general tenor of judicial decisions on the same subject. But later on, the instructions and regulations seem to ignore upon their face all questions of intent, and consequently the error of the judge below, who deemed these instructions as tantamount to statutory law or the provisions of the treaty itself.

Naturally, while acting under these instructions, forfeitures were frequently asserted, especially as to printed matter and publications; until in 1877 the matter was referred to the International Bureau, the decision of which is forcibly presented in the Annual Report of our Postmaster General under date of Nov. 9, 1877. Unfortunately this decision had not been sufficiently promulgated, so as to come under the observation of court and counsel, when this case was tried below.

BOOKS BY MAIL SHOULD BE FREE OF DUTY.

From the report of the Postmaster General, Nov. 9, 1877, Page XVI.

"The exchange of correspondence with other countries, under the provisions of the General Postal Union treaty, is greatly embarrassed by the fact that, under the laws of the United States, customs duties are chargeable on all books, received in the mail from foreign countries, which have not been printed more than twenty years. The stipulations of that treaty provide for the exchange of books of limited weight in the mails between the re-

spective countries of the Union, and also that any article whatever, liable to customs duties, shall not be admitted for conveyance by the post. It has been the practice to deliver dutiable books, received in the mails from foreign countries, to officers of the customs for the collection of the customs duties, chargeable thereon by our revenue laws; but, as *the International Bureau has recently construed the provisions of the Postal Union treaty as not authorizing the collection of customs duties* on books sent by mail within the limits of the Union, and as *requiring the postal administrations*, which cannot give circulation, *free from duty*, to the books sent to them from foreign countries, to *return them* as articles of undeliverable correspondence, it has been found necessary *to modify the post-office regulations* governing the treatment of dutiable books received in the mails from other countries, by directing their return in future to the country of origin.

Books are *universally* admitted as mailable matter in the postal exchanges between all enlightened nations, and although in most countries of Europe they are liable to customs duties, such duties are never claimed for books admitted to circulation by the post. It seems desirable, therefore, in the interest of authors and other private correspondents, receiving books *of small size and value* by the international mails, *without any purpose of evading customs duties*, that provision should be made by law, under such safeguards against fraud as may be deemed proper, authorizing their *delivery free of duty*."

What is said above as to dutiable books, applies equally to other mailable matter. The maxim "*De minimis non curatur*" would seem to control in all cases, even aside from the question of comity and treaty obligations. But, however, that may be the intention of such treaty is manifest, never to allow the foreign mail to be made the means of unlawful importation, and special pains are taken to guard against all possibilities of asserting a forfeiture as to matter, the conveyance of which had been openly assumed at the office of origin.

We will not now consider what the effect of this treaty would be as to dutiable goods, clandestinely enclosed under cover of mail, and unaware of their true character, forwarded to their place of destination. We are inclined to believe that as to *secret* importations, neither treaty nor other contract obligations would establish rights that any government is bound to respect.

But such is not our case. Here the contents was truly disclosed and the package *expressly admitted* to the privileges of the foreign mail, with full knowledge of all the facts.

II.

Whether a letter or package, (the contents whereof is truly disclosed), is entitled to be admitted to the privileges of the foreign mail and to be accordingly registered, transported and delivered, is a question for the office of origin to decide, and its decision on that subject is conclusive upon the postal authorities at the place of destination.

In the nature of things, such seems to be the only reasonable construction of this treaty. Whether a particular article shall be admitted or not, must in the first instance be decided by the authorities to whom the same is offered for conveyance. We have already seen above that—although the treaty expressly provides that "*no articles whatever liable to customs duty*" shall be admitted—this clause does not exclude articles of *insignificant value*, such as books, etc.

Now it must be conceded that patterns of merchandise, though in our country on account of their novelty, texture, design, etc., in the opinion of a government appraiser, like our friend Brigham, (whom we concede to be highly learned in the *law*), valued at $4.00, may not command any *salable* value at all in the country of their origin, and consequently great opportunities for strife would be afforded if the decision of the officials abroad were not final and conclusive on this subject. Evidently it was not the intention of the contracting powers, to allow such or similar disturbing complications to arise.

What the effect of the treaty would be as to drop letters or unregistered packages—upon which the mind of the foreign officials did not expressly pass—we do not now deem necessary to discuss.

III.

Even if erroneously admitted to the mail, the right to assert a forfeiture does not exist. The article, if not properly admitted, under said treaty, must be returned to the place whence it came, or—to say the least—surrendered to the addressee on payment of duty.

When we say "*erroneously admitted*," we have in our mind packages, the contents whereof is made known at the time of admission, but as to the mailable character whereof various countries may properly differ. The detailed regulations accompanying the treaty, specially provide:

Art. XVI. "The correspondence, which shall not be delivered, *from whatever cause*, shall be returned immediately through the respective offices of exchange." And (as will be seen from the above report of the Postmaster General), this clause has been construed by the International Bureau to require the postal administrations, which cannot give circulation, *free from duty*, to return the articles as *undeliverable correspondence*.

IV.

The right to assert a forfeiture does not exist under our laws independent of an actual fraudulent intent to evade customs duty.

The learned district judge who decided this case in the court below, was of the opinion that a lawful seizure could be made, even if the elements of fraud and guilty knowledge were altogether wanting; and such being his opinion, it was not difficult to arrive at a conclusion adverse to the plaintiff in error. This decision is not, however, borne out by either reason, statute or judicial authority.

R. S., Sec. 3082 provides: "If any person shall *fraudulently* or *knowingly* import or bring into the United States or assist in so doing, any merchandise contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding five thousand dollars nor less than fifty dollars, or be imprisoned for any time not exceeding two years or both."

These provisions are highly penal and must meet with a strict construction.

Consequently duties are never imposed upon doubtful interpretation.

Adams vs. Bancroft, 3 Sumn., 384.

And it has universally been held that "the spirit of the revenue laws is not to create a forfeiture of property, except for acts of the owner, attended with fraud, misconduct or negligence."

651 Chests of tea vs. U. S., 1 Paine, 499.

The mere importation of goods, subject to duty, without paying or securing the duties is not in general an offense. To constitute smuggling, for which an indictment may be sustained, there must be something in the manner of the importation, which violates a statute defining the offense, such as secrecy or concealment, an intent to defraud the revenue or the like.

U. S. vs. Thomas, 2 Abb. U. S., 114.

And in order to leave no room for discussion, Congress in 1874, while amending the Customs Revenue Laws, (Suppl. R. S., Vol. I., Sec. 16, page 80), provided "That in all actions, suits and proceedings in any court of the United States.....it should be the duty of the court to submit to the jury, as a distinct and separate proposition, whether the alleged acts were done with an actual intention to defraud the United States..... And unless intent to defraud shall be so found, no fine, penalty or forfeiture should be imposed." This section has repeatedly of late met with judicial construction.

Woods, A. J. "I think it perfectly clear that this section makes *intent to defraud* the United States a necessary condition to the forfeiture of the goods, etc., for the violation of the customs revenue laws."

U. S. vs. 90 Demijohns of Rum, 8 Fed. Rep., 485.

Hoffman, D. J. "In all cases, where the government fails to show affirmatively an "*actual intention to defraud*," judgment must be against it.

U. S. vs. Three Trunks, 8 Fed. Rep., 583.

In 8 Fed. Rep., 485, the court refused to follow Von Cotzhausen vs. Nazro, although pressed upon its consideration.

V.

The erroneous instructions of the Treasury and Mail Departments do not justify a withholding of this package on part of the defendants.

The proposition is substantially covered by what is said before. Circular No. 2321, under date of June 29, 1875, (at page 36) we concede to be a proper instruction within the above laws and treaty, as it distinctly confines seizures and forfeitures of mail to cases, where there is *an intent to evade the*

payment of duties, i. e., actual fraud. All subsequent instructions and circulars at pages 31–36 must necessarily fall, unless judicially construed to apply to similar cases, although the intent to defraud is not *expressly* recognized by their language.

VI.

The refusal to surrender, unless on payment of appraised value, duty added, was a wrongful conversion.

If we are right in the foregoing propositions and that, in the absence of an actual intent to defraud, the right of forfeiture does not exist, then it is difficult to advance any reason for exacting the appraised value as a condition precedent to delivery.

It is too well settled that a collector is not justified by the instructions of the treasury department in imposing duties not warranted by law.

Lanning vs. Maxwell, 3 Blatchf., 125.

Munsel vs. Maxwell, 3 Blatchf., 364.

VII.

The amount, exacted as a condition of surrender, was in excess of the appraised value and customs duty.

Making all possible allowances—conceding Mr. Brigham to be not only learned in the law, but at the same time a good appraiser of ladies' trinkets—and abstaining also from questioning the practice in Revenue matters of estimating all fractions of a pound at a pound, then the account stands as follows (page 25):

Appraised value.....	$4.00
35 per cent. ad valorem.....	1.40
50 cents per pound.....	.50
	$5.90

The amount exacted is $6.00 (pages 22 and 29).

VIII.

The judgment is not supported by the finding and ought to have been for the plaintiff in error.

We do not deem it necessary here to repeat what we have argued above.

"In case of unlawful seizure, officers of the customs are liable in damages to the full extent of the injury."

Hall vs. Warren, 2 McLean, 332.

In the form of dollars and cents we, however, ask but little. We merely request that the decision of this Honorable Court vindicate our rights. We insist that in view of the Treaty of Berne this package was proper mailable matter and not subject to duty at all! But even if mistaken in this—the view of ourselves and postal officials abroad—the case did not justify a *forfeiture!* In their attempt to collect revenue on mail matter of questionable and insignificant value, the United States have always stood isolated and alone. Is it not unbecoming a great government like ours to insist upon such a petty practice and construction of treaty, at variance with all other civilized countries? "*De minimis non curatur*" ought in this (as in foreign) jurisdictions, to be the leading maxim, unless a case of *actual fraud* calls for the interposition of official authority and a vindication of unquestionable laws. We have almost felt ashamed to litigate a question, involving at most but a dollar or two;—but what should we do? We had our choice between three evils: *Pay, beg* or *sue!* As we did not feel like *purchasing* the contents of this registered mail package, nor *beg the Secretary for a remission of what we deem an unlawful forfeiture* on payment of duty, no other remedy remained, but "*suit.*" And having waited more than six months for a reconsideration of the refusal to deliver, it cannot truly be said that our action is inconsiderate or prompted by unworthy motives.

We sincerely hope that the decision of this honorable court may tend to do away with similar questions, constantly arising under this treaty, and, while fully informing the public as to their rights in the premises, that it may cause our officials in the future properly to distinguish between oppression and the necessary exercise of lawful authority.

F. W. COTZHAUSEN,

Counsel for plaintiff in error.

17-215

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

MAGDALENE VON COTZHAUSEN
vs.
JOHN NAZRO, COLLECTOR, &C., AND HENRY C. Payne, postmaster. } No. 200.

BRIEF FOR THE UNITED STATES.

10760

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

MAGDALENE VON COTZHAUSEN
vs.
JOHN NAZRO, COLLECTOR, &c., AND HENRY C. PAYNE, postmaster. } No. 200.

BRIEF FOR THE UNITED STATES.

This is an action for the alleged conversion by the defendants of an article of personal property sent to the plaintiff from Germany in a sealed envelope through the mail.

The defense was that the article in question was subject to a customs duty under the customs laws of the United States, which duty not being paid, the article was liable to seizure and detention, and so both officers justified under the laws of the United States.

The case of the Government is thoroughly presented in the opinion of Judge Dyer, which, with the statement of the case, is as follows:

This was an action to recover the value of a certain article of personal property, which was sent to the plaintiff by a relative residing in Germany, in a sealed envelope through the mail, and which it was claimed had been converted by the defendants to their own use. The defense to the action was that the defendant, Nazro, was collector of customs, and that the defendant, Payne, was postmaster at the city of Milwaukee; that the article in question was subject to customs duty under the customs laws of the United States; that the duty not having been paid, the article was liable to seizure and detention, and that the acts done by the defendant, Nazro, were done under color of his office and by virtue of the laws of the United States, and that the defendant Payne acted under and by authority of the defendant Nazro as such collector, aiding and assisting him in respect thereof.

The case was tried by a jury. The proofs were, in brief, that in the month of May, 1877, a sealed package, addressed to the plaintiff, came by mail to the Milwaukee post-office; that it came as a registered package, and that the plaintiff was notified of its arrival. That she went to the post-office to receive it, and receipted for it according to the usual practice in cases of delivery of registered letters or packages. The package was marked "suspected liable to customs duty," and the collector of customs was notified of its receipt. There was also an indorsement on the package indicating its contents. The package was then placed in the hands of Mrs. Von Cotzhausen, who opened it, and thereupon the deputy collector, who, on notification, was present, took it from her hands and thereafter retained it, subsequently causing its contents to be appraised by the Government appraiser. The article inclosed in the package was a knit shawl, made from fine wool, and was appraised at $6.00. It was sent, as the testimony tended to show to the plaintiff, by her daughter-in law, residing in Germany, as a present or token of affection. Subsequently, personal application was made to the deputy collector by the plaintiff for the article, and she was told that there were two courses for her to pursue; that she could pay the appraised value and take the package, or could apply to the Secretary of the Treasury for permission to pay the duty and receive the package. The matter being placed in the hands of her counsel, Mr. Cotzhausen, the same alternative was submitted to him, and he declined to do either. After some further negotiations, this suit was brought and the article in ques-

tion has ever since remained in the hands of the collector, but no steps have ever been taken by him to procure a judicial adjudication of forfeiture. It seems that in receipting for the package at the post-office, answering inquiries in relation to it, opening it in the presence of the deputy collector, surrendering it to his hands and leaving it with him, the plaintiff acted upon the suggestion or request, or under the requirement of those present. At the interviews of the plaintiff and her counsel with the deputy collector, no offer was made to pay the duty, if the property should be surrendered, and Mr. Cotzhausen testified that he was told at the collector's office that it was confiscated as smuggled goods. The seizure was made without regard to the intent of the party sending the package, or that of the party expected to receive it. An entry of the seizure and appraisal was made in the collector's office, and the seizure was reported to the Secretary of the Treasury.

The jury returned a special verdict by which they found:

1. That the article in question was sent from a foreign country by mail, inclosed in a sealed envelope, addressed to the plaintiff at Milwaukee, and was transmitted by mail thus inclosed to its point of destination.

2. That the contents of the package were disclosed by writing placed upon it by the sender.

3. That the package was received at the Milwaukee post-office, and that the collector of customs was notified of its receipt.

4. That the package was placed in the hands of the plaintiff by a clerk in the post-office, in the presence of the deputy collector, and that she opened it.

5. That the deputy collector then seized the article after it was so opened.

6. That the collector thereafter caused the article to be appraised by the appraiser for this collection district, and that he refused to surrender it to the plaintiff without payment of the amount of the appraisal.

7. That the article was not sent by mail for the purpose or with intent on the part of the sender or the plaintiff to avoid the payment of duties thereon.

8. That the value of the article on the 21st day of May, 1877, was $4.00.

On this verdict both parties moved for judgment.

DYER, J.—A proper disposition of the questions involved requires an examination of various statutes and regulations of the Treasury Department touching the collection of duties upon imported articles.

And first, it is not, as I understand, claimed, and certainly upon the testimony there is no ground for claiming, that the transmission of the article in question through the mails, even if it is dutiable, was an act of smuggling. It was not a clandestine importation within the definition of that term. The jury has found that it was not sent with intent on the part of the sender or receiver to avoid the payment of duties thereon, and this finding is undoubtedly sustained by the fact that the contents of the package were indorsed on the envelope inclosing it by the sender.

I do not think there is room for doubt that the article is dutiable. It is a knit woolen shawl, and comes under one of the subdivisions of Class 3, in Schedule L, entitled "Wool and Woolen Goods," in Title 33, of the Revised Statutes, which relates to duties upon imports.

By the detailed regulations for the execution of the treaty concerning the formation of a General Postal Union, concluded at Berne, October 9, 1874, which regulations were put into execution on the day on which the treaty came into force, and have the same duration as the treaty, and have the force and effect of law, par. 25, vol. 19, U. S. Stat. at Large, p. 604, it is provided that "there shall not be admitted for conveyance by the post any letter or other packet which may contain either gold or silver money, jewels or precious articles, or any other article whatever liable to custom duties."

By sec. 3061 of the Rev. Stat., an officer of the customs is authorized to search and examine any person on whom he shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or otherwise, and to search any envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if such officer shall find any merchandise on or about such person or in any such envelope, which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, he shall seize and secure the same for trial.

Sec. 3074 provides that in all cases of seizure of property subject to forfeiture for any of the causes named in any provision of law relating to the customs, when in the opinion of the collector making the seizure the value of the property seized does not exceed five hundred dollars, he shall cause an appraisement of the same to be made in the manner prescribed, which appraisement shall be properly attested by the collector and the persons making the appraisal.

Sec. 3086 provides that "all merchandise or property of any kind seized under the provisions of any law of the United States relating to the customs shall, unless otherwise provided by law, be placed and remain in the custody of the collector, to abide adjudication by the proper tribunal, or other disposition according to law."

By sec. 3081, it is provided that "the collectors of the several districts of the United States, in all cases of seizure of any merchandise for violation of the revenue laws, the appraised value of which, in the district wherein such seizure shall be made, does not exceed one thousand dollars, are hereby authorized, subject to the approval of the Secretary of the Treasury, to release such merchandise on payment of the appraised value thereof."

Sec. 3082 provides that "if any person shall fraudulently or knowingly import * * * into the United States * * * any merchandise contrary to law, or shall receive * * * such merchandise after importation, knowing the same to have been imported contrary to law, such merchandise shall be forfeited, and the offender shall be fined * * * or be imprisoned, * * * or both."

By sec. 251 of the statutes the Secretary of the Treasury is authorized to prescribe rules and regulations, not inconsistent with law, to be used in carrying out the provisions of law relating to raising revenue from imports, or to duties on imports.

On the 9th of July, 1875, the following amended regulation or order numbered 2375, was made by the Post Office Department, with the concurrence of the Treasury Department, and was by the latter Department published September 1, 1875, for the guidance of officers of the customs:

"Ordered that sec. 52, chap. 3, of the Regulations of the Post Office Department, issued by authority of the Postmaster-General, on the 5th of April, 1873, as modified by the order of the Postmas-

DYER, J.—A proper disposition of the questions involved requires an examination of various statutes and regulations of the Treasury Department touching the collection of duties upon imported articles.

And first, it is not, as I understand, claimed, and certainly upon the testimony there is no ground for claiming, that the transmission of the article in question through the mails, even if it is dutiable, was an act of smuggling. It was not a clandestine importation within the definition of that term. The jury has found that it was not sent with intent on the part of the sender or receiver to avoid the payment of duties thereon, and this finding is undoubtedly sustained by the fact that the contents of the package were indorsed on the envelope inclosing it by the sender.

I do not think there is room for doubt that the article is dutiable. It is a knit woolen shawl, and comes under one of the subdivisions of Class 3, in Schedule L, entitled "Wool and Woolen Goods," in Title 33, of the Revised Statutes, which relates to duties upon imports.

By the detailed regulations for the execution of the treaty concerning the formation of a General Postal Union, concluded at Berne, October 9, 1874, which regulations were put into execution on the day on which the treaty came into force, and have the same duration as the treaty, and have the force and effect of law, par. 25, vol. 19, U. S. Stat. at Large, p. 604, it is provided that "there shall not be admitted for conveyance by the post any letter or other packet which may contain either gold or silver money, jewels or precious articles, or any other article whatever liable to custom duties."

By sec. 3061 of the Rev. Stat., an officer of the customs is authorized to search and examine any person on whom he shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or otherwise, and to search any envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if such officer shall find any merchandise on or about such person or in any such envelope, which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, he shall seize and secure the same for trial.

Sec. 3074 provides that in all cases of seizure of property subject to forfeiture for any of the causes named in any provision of law relating to the customs, when in the opinion of the collector making the seizure the value of the property seized does not exceed five hundred dollars, he shall cause an appraisement of the same to be made in the manner prescribed, which appraisement shall be properly attested by the collector and the persons making the appraisal.

Sec. 3086 provides that "all merchandise or property of any kind seized under the provisions of any law of the United States relating to the customs shall, unless otherwise provided by law, be placed and remain in the custody of the collector, to abide adjudication by the proper tribunal, or other disposition according to law."

By sec. 3081, it is provided that "the collectors of the several districts of the United States, in all cases of seizure of any merchandise for violation of the revenue laws, the appraised value of which, in the district wherein such seizure shall be made, does not exceed one thousand dollars, are hereby authorized, subject to the approval of the Secretary of the Treasury, to release such merchandise on payment of the appraised value thereof."

Sec. 3082 provides that "if any person shall fraudulently or knowingly import * * * into the United States * * * any merchandise contrary to law, or shall receive * * * such merchandise after importation, knowing the same to have been imported contrary to law, such merchandise shall be forfeited, and the offender shall be fined * * * or be imprisoned, * * * or both."

By sec. 251 of the statutes the Secretary of the Treasury is authorized to prescribe rules and regulations, not inconsistent with law, to be used in carrying out the provisions of law relating to raising revenue from imports, or to duties on imports.

On the 9th of July, 1875, the following amended regulation or order numbered 2375, was made by the Post Office Department, with the concurrence of the Treasury Department, and was by the latter Department published September 1, 1875, for the guidance of officers of the customs:

"Ordered that sec. 52, chap. 3, of the Regulations of the Post Office Department, issued by authority of the Postmaster-General, on the 5th of April, 1873, as modified by the order of the Postmas-

ter General of January 3, 1874, be modified and amended so as to read as follows:

"Sec. 52. When letters, sealed packages, or packages the wrappers of which cannot be removed without destroying them, from a foreign country, are received through the mails at any post-office, and the postmaster has reason to believe that such letters or packages contain articles liable to customs duty, he shall immediately notify the customs officer of the district in which his office is located, or the customs officer designated by the Secretary of the Treasury to have access to the several post-offices to examine the mails arriving from foreign countries, of the receipt of such letters or packages, and the names of the persons to whom the same are addressed, and retain such letters or packages a reasonable time, for the purpose of allowing such customs officers to examine them. Letters registered or ordinary or sealed packages, or packages the wrappers of which cannot be opened without destroying them, can only be opened by the parties addressed; and when such letters or packages are received at the office of destination, stamped as hereinafter provided, the parties addressed should be notified by the postmaster at the office of delivery, that such a letter or package has been received at his office, believed to contain articles liable to duty, and that the same will be returned to the office of the country from whence it came, unless the person to whom it is addressed shall appear at the post-office at a time in said notice to be designated, not exceeding twenty days from the date of said notice, and receive and open the said letter or package, in the presence of an officer of the customs; and postmasters are hereby instructed and directed to extend to custom-house officers all proper facilities, and permit customs officers, specially designated for that purpose by the Secretary of the Treasury, to have access at all times to their respective offices for the purpose of examining mail matter received from foreign countries, in order to protect the customs revenue from frauds practiced through the mails.

"*Provided, however*, That nothing herein contained shall authorize or allow customs officers to seize or take possession of any letter or package whilst the same is in the custody of a postmaster, nor until and after the same has been delivered to the person to whom it is addressed, unless the package, when examined, is found to contain articles liable to customs duty: *And provided further*, That no letter or package which is believed to contain articles liable to duty,

shall be detained at an intermediate office, when the discovery inducing that belief is made at such office, more than twenty-four hours, nor at the office of delivery a longer period of time than may be necessary for the person to whom such letter or package may be addressed to appear, after the notice hereinbefore provided has been given; but when an unsealed package is found, on examination, to contain an article or articles liable to customs duty, it should be delivered to the proper officer of the customs, and the postmaster should inform the person to whom it is addressed of its arrival in the mails and its delivery to the customs officer; and it shall be the duty of the postmaster at an office at which a letter or sealed package (addressed to an interior office), suspected of containing articles liable to customs duty, shall arrive in the mails from a foreign country, before forwarding such letter or package to the office of destination, to cause the envelope or wrapper thereof to be plainly stamped across its face with the words, 'suspected liable to customs duty.'"

On the 3d May, 1877, the following order was promulgated by the Treasury Department:

"It appears from official reports received from various officers of this Department, that articles from foreign countries are frequently imported through the mail to the loss of the revenue.

"Such importations, with certain exceptions, are illegal, and the articles become subject to seizure and forfeiture for violation of the revenue laws.

"Collectors of customs will therefore seize all such packages (with the exception of those hereinafter specified) delivered to them under the existing regulations of the Postmaster-General, embodied in printed decision No. 2375," which is the order or regulation last before recited as made by the Postmaster-General on the 9th of July, 1875.

"If the importation be less than fifty dollars in value, the collector will deliver the goods to the party entitled thereto, on payment of their appraised value, to be accounted for in the same manner as the proceeds of other forfeitures; and if of fifty dollars or more in value, he will report the case to the Department for special instructions."

Certain importations by post from Canada, not exceeding a certain weight, are excepted from the operation of this order.

It should be noticed in this connection, that by regulation of the

Treasury Department, made May 16, 1876, it was declared, that "the General Postal Union concluded at Berne, October 9, 1874, is not construed by the Department as exempting from customs duty * * * articles received in the mails from postal union countries, which by the laws of the United States are subject to duty; or as changing in any particular the course of proceedings for the collection of customs duties on such articles, prescribed by section 52 of the Post-Office regulations, as modified by the order of the Postmaster-General, dated the 9th of July last, and embodied in the printed decision of this Department, No. 2375."

These are the provisions of law and regulations of the Department which it seems necessary to specially notice. And from them we learn, first, that the sending of this article by mail was forbidden, regardless of the intent of the sender. On its arrival at destination, a course of procedure is prescribed relative to seizure and appraisement. When seized, the law places it in the custody of the officer to abide adjudication, with only the right on his part to release it on payment of the appraised value.

The regulations of the Treasury Department are such as are warranted by and not inconsistent with the law, and hence have the effect of law, and I do not see but the officers complied substantially with the regulations.

The point that has given me difficulty is this: Since sec. 3082 declares that if any person shall fraudulently or knowingly import any merchandise contrary to law, or shall receive it, knowing it to have been so imported, the property shall be forfeited and the person punished, the question is, whether there can be a lawful seizure, if these elements of fraud or guilty knowledge are wanting. Counsel for plaintiff contends that the whole right is dependent upon the intent with which the property is imported. The attorney for the United States argues that the importation was contrary to positive provision of law; that the statute directs the seizure of all property imported contrary to law; that this article being dutiable, it was seized in pursuance of the statute; that if a positive law was violated in importing the article, that fact rendered the article forfeited or forfeitable, regardless of interest. This, upon the principle that a party is presumed to know the law and will not be heard to plead ignorance of the law, and that guilty knowledge is only required to be shown as the basis for a criminal proceeding.

That the provisions of this sec. 3082 are strictly penal is obvious. The Supreme Court has held (Stockwell v. The U. S., 13 Wall., 551) that the design of this act was to punish as a crime that which before had subjected its perpetrator to civil or *quasi* civil liability, and that it is cumulative in its character to other provisions of law which had previously existed, rather than substitutionary.

Whatever may be the correct view of this question, namely, the necessity of proving actual fraud or guilty knowledge for the purpose of obtaining ultimately a judicial adjudication of forfeiture, these conclusions, under the various provisions of law referred to, seem to me, after careful reflection, unavoidable: that this article was dutiable; that its importation through the mails was absolutely forbidden, and therefore unlawful, though the intent of the sender was innocent; that by express provision of law, because it was dutiable, and because of the manner in which it was sent, it became the duty of the proper officer, on arrival of the article at destination, to seize it, it being then only essential to justify the seizure; that he had reasonable cause to believe it to be subject to duty, or to have been unlawfully introduced into the United States; that the seizure being effected, the law made the seizing officer the custodian of the property; that by further express statutory provisions, the owner could only reclaim it by payment of the appraised value, or appeal to the Secretary of the Treasury for relief; and that as the property was seized in conformity with law, and therefore came lawfully in possession of the seizing officer, there was not the wrongful conversion essential to personal liability.

Counsel for plaintiff has called attention to sec. 3058 of the Revised Statutes, which provides that "all merchandise imported into the United States shall * * * be deemed and held to be the property of the person to whom the merchandise may be consigned, any sale, transfer, or assignment, prior to the entry and payment of the duties on such merchandise * * * to the contrary notwithstanding;" and upon this provision it is urged that the title of Mrs. Von Cotzhausen has not been divested; that she is owner of the property, and therefore entitled to possession. But by the express terms of this provision, the ownership is thus declared for the purposes of enforcing payment of duties, and the evident purpose of the provision is to preserve the same liability

to payment of duty in case of a sale or transfer of the property as existed under the original ownership; and further, there is nothing in this section which is inconsistent with other provisions giving power of seizure even as against the original owner. If the property is dutiable, and has been imported contrary to law, and is consequently liable to seizure, it would not follow from the fact of ownership that the owner would be entitled to possession.

It is further contended that sec. 3082, which declares that if any person shall fraudulently or knowingly import into the United States any merchandise contrary to law, such merchandise shall be forfeited, was not intended to embrace a mailable article such as that in question, and sent for the purposes here disclosed, but was intended to embrace only merchandise designed for the market. I do not think the section can be so construed. It comprehends any merchandise imported contrary to law, and is not limited to merchandise sent or received for sale. And as the term "merchandise" means any article which is the object of commerce, or which may be bought or sold in trade, it is plain that the article in question is an article of merchandise. Moreover, by sec. 2766, it is declared that "the word merchandise, as used in this Title, may include goods, wares, and chattels of every description, capable of being imported."

Attention has been called to the sections of the Revised Statutes 3875, 3876, 3877, and 3878, defining mailable matter and dividing it into classes: Mailable matter of the third class, including flexible patterns and samples of merchandise not exceeding twelve ounces in weight. But this, as I understand it, has reference to interstate mail matter, and is not intended to permit the transmission of articles therein enumerated, which are subject to duty, through the mails, from a foreign country, in disregard of the provisions of the Postal Union Treaty, and of the regulations for its enforcement. And the force of this observation is apparent, when it is noticed that some of the articles designated in sec. 3878, as third class mail matter, are by the law imposing customs duties made dutiable. So, too, I do not think that sec. 3895, which provides for the return to the owner or sender of letters, packets, or other matter which may be seized for violation of law, was intended to be applied to dutiable articles sent through the mails from a foreign country, and the sending of which is forbidden by the Postal Union Treaty. Sec. 3991 provides, among other things,

that "all laws for the benefit and protection of customs officers making seizures for violating revenue laws, shall apply to officers making seizures for violating postal laws."

Authorities were cited on the part of the plaintiff to the effect that where there are serious ambiguities in the statute the construction should be in favor of the importer, and that duties are not imposed upon a doubtful interpretation. But I do not find the article in question dutiable upon a doubtful interpretation of the statute.

Among the cases cited is that of U. S. v. Thomas, 2 Abb. U. S. Rep., 116, in which it was held that no penalty or forfeiture is incurred or can be enforced, simply because the duties on imported goods are not paid or accounted for before the importation is complete, and that it is by acts or omissions subsequent to the importation that forfeitures and penalties are incurred. The court, however, expressly except from the operation of this undoubtedly correct general principle, the case where some law expressly declares the importation itself, or the manner of making it, unlawful. And it is the manner in which the article here was sent, it being dutiable, which the regulations of the treaty expressly forbid.

It would seem to one for the first time investigating this question that there must, or should be, a statutory provision, authorizing the payment of the duty directly to the customs officer and an immediate release of the property, in cases of this character, where the indications are patent that there was, in fact, no intent to avoid the payment of duties, and I must say, that it does not seem quite consonant with justice and right, in such a case as this, that an appraisal of the article should be summarily made and the party required to pay the amount of the appraisal as a condition to obtaining its possession. I do not see, however, but that we are bound down by the strict letter of the law, which must, necessarily, operate with severity upon some cases where we could wish it did not, if we were permitted to indulge in any wish upon the subject. Without pursuing the question further, I am of opinion that judgment must be entered in favor of the defendants.

F. W. Cotzhausen, for plaintiff; G. W. Hazleton, for defendant.

WM. A. MAURY,
Assistant Attorney-General.

C